

January 20, 1999

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Judicial Law Clerks
All Support Personnel

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum No. 99-1: Asylum Grants Based on Coercive Population Control Measures

I. Background of Conditional Asylum Grants

Section 207(a)(5) of the INA, as amended by section 601 of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA), provides that, for any fiscal year, no more than 1,000 aliens may be admitted as refugees or granted asylum under section 208 of the INA pursuant to a determination that the alien was or would be persecuted for resistance to coercive population control methods. Section 601 of IIRIRA also amended the definition of “refugee” in section 101(a)(42) of the INA to provide that:

“a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.”

In Matter of X-P-T-, Interim Decision 3299 (BIA 1996), the Board of Immigration Appeals ruled that an alien who is eligible for a grant of asylum based on resistance to coercive population control methods must receive a grant conditioned on an administrative determination by the INS that a number is available under section 207(a)(5) of the INA.

II. Treatment of Accompanying Spouses and Children

Pursuant to Matter of X-P-T-, since December of 1996, asylum cases based on resistance to coercive population control methods have been conditionally granted. The 1,000 annual cap only applies to conditional grants that are administratively final. Any accompanying spouse and child, however, also must receive a conditional grant, if the principal spouse or parent is granted asylum on a conditional basis. However, as stated in Matter of X-P-T-, the cap does not apply to an accompanying spouse or child of an alien who is conditionally granted asylum based on CPC. The accompanying spouse or child should have his or her conditional grant removed at the same time the principal spouse or parent's conditional status is removed.

III. Current Procedure to Implement the Statutory Cap

In light of the 1,000 annual cap and a requirement that an annual report must be submitted to Congress (see section 601(a)(2) of IIRIRA), it is critical to maintain accurate data on asylum applications which involve coercive population control (CPC) claims. Under the current practice, at the end of a fiscal year, OCIJ must obtain an accurate count of all asylum grants based on CPC. These figures are then provided to the INS. The INS Commissioner then certifies whether there are numbers available under the cap. The Chief Immigration Judge will then remove the condition for any case that is within the cap.

In fiscal year 1997, every alien whose asylum application was conditionally granted based on CPC had a number available and consequently, had his or her condition removed by order of the Chief Immigration Judge on July 29, 1998. A similar procedure is being employed for fiscal year 1998.

IV. Filing of Asylum Applications Based on CPC

A. Immigration Judge Role.

Upon the filing of an application for asylum at the Master Calendar or reviewing an application referred from the INS Asylum Office, the Immigration Judge must determine whether the application involves a CPC claim. If the respondent is a citizen of China, the Immigration Judge must affirmatively ask the respondent or his or her representative whether the asylum application involves a CPC claim. Upon review of the application, if the Immigration Judge determines that the asylum application involves a CPC claim, he or she must note that on the IJ worksheet.

B. Support Staff Role.

Once the Immigration Judge determines that the asylum application involves a CPC claim, the support staff must enter the code "CPC" under "Other Applications."

V. Deciding Asylum Applications Based on CPC

A. Immigration Judge Role.

When an Immigration Judge issues a decision granting an application for asylum, in which CPC is a basis for the asylum claim, the Judge must state in his or her decision whether or not resistance to coercive population control methods is the sole basis for the grant of asylum. If the asylum applicant would not qualify for asylum except on the basis of the CPC claim, the Immigration Judge must conditionally grant the application for asylum. In the event the alien raises a CPC claim and the Immigration Judge determines that the alien qualifies for asylum on a ground other than CPC, the Immigration Judge must grant the application outright and without condition.

The Immigration Judge must note in his or her written or oral decision that the application is being granted on a conditional basis based on CPC and inform the legal technician to update the ANSIR system as outlined in the section V, B of this OPPM. However, consistent with Matter of X-P-T-, the Immigration Judge should also decide whether the alien is eligible for withholding of removal or deportation. If a spouse or child has been included in the application for asylum, the spouse or child must also receive a conditional grant of asylum.

B. Support Staff Role.

If an Immigration Judge conditionally grants an asylum application based on CPC, the support staff must enter a “C” as the decision code under “Asylum.” If it has not been previously entered, the support staff must also enter a “CPC” code in the column “Other Applications.” The support staff must also enter a “C” in the “Other Applications” column under the “CPC” code. It must be noted that the “C” decision code cannot be entered unless it is based on a CPC asylum claim. If the alien is from a country other than China, the ANSIR system will trigger a question to ensure that it is a CPC case.

In the event the alien raises a CPC claim and the Immigration Judge determines that the alien qualifies for asylum on a ground other than CPC, the Immigration Judge must grant the application outright and without condition. In this situation, the support staff must enter a “G” in the decision code under “Asylum.” If it has not been previously entered, the support staff also enter a “CPC” code in the column “Other Applications.” The support staff must also enter an “O” in the “Other Applications” column under the “CPC” code if the asylum application is granted on a basis other than CPC.

If the Immigration Judge denies the asylum application, the support staff must put a “D” under “Asylum” and a “D” under the “CPC” code in the “Other Applications” column.

VI. Disposition of the Record of Proceeding

Once the Immigration Judge conditionally grants an application for asylum based on CPC, the record of proceeding should be set aside and maintained at the Court, pending the receipt of the order removing the condition. Only upon receipt of the order removing the condition, should a record of proceeding be forwarded to the Federal Records Center in accordance with our file retirement

schedule.

If you have any further questions on this issue, please contact my Legal Counsel, Michael Straus, at (703)305-1716.

Michael J. Creppy
Chief Immigration Judge